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No. 57253-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

CITY OF ARLINGTON, DWAYNE LANE and
SNOHOMISH COUNTY,

Appellants,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, STATE OF WASHINGTON; 1000 FRIENDS OF WASHINGTON; STILLAGUAMISH FLOOD CONTROL DISTRICT; PILCHUCK AUDUBON SOCIETY; THE DIRECTOR OF THE STATE OF WASHINGTON DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT; and AGRICULTURE FOR TOMORROW,

Respondents.

BRIEF OF APPELLANT SNOHOMISH COUNTY

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ORIGINAL

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I. INTRODUCTION

This case is about the authority of Snohomish County's elected leaders to plan for growth consistent with the requirements of the Growth Management Act (GMA) (chapter 36.70A.RCW). The specific issue in this case concerns the Island Crossing property, once used as farmland that, due to its rapidly developing surroundings and proximity to I-5, is now unsuited for the practical demands of long-term agricultural production. The Snohomish County Council, recognizing that the Island Crossing property is no longer appropriate for agricultural production, changed its land use designation to that of urban commercial and targeted it for inclusion within the adjacent urban growth area of the City of Arlington.

Several parties, including the State Department of Community Trade and Economic Development (CTED) (on the referral of Governor Gary Locke), challenged the re-designation before the Central Puget Sound Growth Management Hearings Board (Board). The Board, blinded by the fact that previous efforts in the mid-1990s by the County and Appellants Arlington and property owner Dwayne Lane to re-designate the property in a similar fashion had been unsuccessful, and the fact that the land still contained the same soils that had led it to be designated as

agricultural land most recently in 1998, found the County's re-designation to be noncompliant with the GMA.

The key issue in this case is the authority of Snohomish County to make a different choice regarding the Island Crossing property than it did in 1998, and to have that different choice respected by the Board. In 1998 the County designated it for agricultural use. In 2003 and 2004 it designated it for urban use. The Board decided that so little had changed "on the ground" since 1998 that the County's changed decision could not be justified. However, under the GMA the County decisionmakers are allowed to change their minds and make different choices over time regarding the same property as long as the record supports that choice. That is the key point of this case. The Board refused to acknowledge that a similar record can support a different GMA choice over time.

A careful analysis of the relevant GMA-based criteria, well documented in the record, supports the County's choice that the Island Crossing property no longer meets the GMA definition of "agricultural land". Rather than deferring to the County's choice in that regard, as it was required to do, the Board simply decided that the Island Crossing property should remain in an agriculture

designation and rejected Snohomish County's attempt to re-designate it.

In its zeal to freeze the Island Crossing lands in their agricultural designation, the Board committed multiple errors. First, the Board applied an erroneous legal standard in evaluating whether the County re-designated the lands from an agricultural designation consistent with the GMA, improperly giving undue weight to soils characteristics and ignoring the locational factors which impact the land's long-term commercial prospects. Second, the Board improperly re-weighed the evidence considered by the County, substituting its judgment for that of the County Council in a manner which failed to afford the County decisionmakers the heightened deference due their choice under the GMA and recent case law. Finally, and most remarkably, the Board invented a new legal test which it decided the County had to meet, and did not meet in this case, for re-designating agricultural lands. The Board ruled that the County must undertake an area-wide analysis of agricultural lands and evaluate the impact that re-designation of the subject property would have on the agricultural industry as a whole. These three errors, any one of which is grounds for relief, warrant

reversal of the Board's decisions by this court under the standards in the Administrative Procedures Act (APA) (chapter 34.05 RCW).

Finally, the superior court, in reviewing the Board's decision, erroneously ruled that the County was barred by res judicata from re-designating the property due to its unsuccessful attempt in the late 1990's. The Court concluded that the County could not re-designate the property without showing a change in circumstances. The Court's ruling on the res judicata issue (not raised before the Board) and imposition of the unlawful "changed circumstances" test, must also be reversed since they are contrary to law.

II. ASSIGNMENTS OF ERROR

A. In this appeal under the APA, the superior court erred by affirming two decisions of the Board. The Board's decisions erroneously found that the County failed to comply with the GMA by twice re-designating 110.5 acres (partially owned by Appellant Lane) in the Island Crossing area of Snohomish County from rural and agricultural use to an urban designation and placing it in the urban growth area (UGA) of the City of Arlington.

B. The trial court erred by ruling that the County was barred by the doctrines of res judicata and collateral estoppel (collectively

"res judicata") from re-designating the Island Crossing agricultural land unless it could show a change in circumstances.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Assignment of Error A.

1. In denying Snohomish County's request for relief from the Board's orders under RCW 34.05.570(3), the trial court committed error by affirming the Board's orders which were defective in the following respects:

a. The Board erroneously interpreted the GMA and engaged in an unlawful decision making process by failing to afford proper deference to the legislative decisions of the Snohomish County legislative body, which had adopted the two challenged ordinances re-designating the Island Crossing property. RCW 36.70A.320(3); 36.70A.3201; RCW 34.05.570(3)(c),(d).

b. The Board erroneously failed to give deference to the County's decision re-designating the Island Crossing property out of rural and agricultural designations when that decision was not clearly erroneous; therefore, the Board's decision was not supported by substantial evidence in the record. RCW 34.05.570(3)(e).

c. The Board erroneously failed to give deference to Snohomish County's determination that the Island Crossing

property no longer contained agricultural lands of "long-term commercial significance." RCW 36.70A.030(2); 36.70A.030(10); WAC 365-190-050(1); RCW 34.05.570(3)(e).

d. The Board erroneously interpreted the GMA and failed to give proper deference to Snohomish County, by weighing and re-weighing the evidence considered by the County legislative authority below rather than acting in its proper appellate capacity. RCW 36.70A.320(3); 36.70A.3201; RCW 34.05.570(3)(d).

2. The Board erroneously interpreted the GMA by imposing on the County a legal standard for re-designating agricultural lands that was unsupported by law, was arbitrary and capricious, and resulted in an unlawful decision-making process. RCW 34.05.570(3)(c), (d), (i).

Assignment of Error B.

1. A growth management hearings board has authority to consider and apply to proceedings before it the legal concept of res judicata.

2. The failure of a litigant to raise the issue of res judicata before a growth management hearings board precludes that litigant from raising the issue for the first time at the superior court level in an appeal under the APA.

3. In finding that res judicata precluded Snohomish County's action in re-designating the property from agricultural status, the superior court imposed an erroneous legal standard ("change in circumstances") contrary to this court's holding in City of Redmond v. CPSGMHB (Redmond II), 116 Wn.App 48, 65 P.3d 337, review denied, 150 Wn.2d 1007 (2003).

IV. STATEMENT OF THE CASE

To avoid duplication, Snohomish County adopts and incorporates by reference the Statement of the Case in the Opening Brief of Dwayne Lane and the City of Arlington.

The two Board decisions on appeal in this case are the Corrected Final Decision and Order (FDO) (March 22, 2004) (CP Sub #24, pp. 2562-2603) and the Order Finding Continuing Noncompliance (Order on Compliance) (June 24, 2004) (CP Id., pp. 2886-2918). The FDO evaluated County Council Amended Ordinance No. 03-063. (CP Id., pp. 1785-1800) The Order on Compliance reviewed County Council Amended Emergency Ordinance No. 04-057. (CP Id., pp. 2625-2643) Both ordinances reached similar decisions and adopted similar findings, though No. 04-057 contained more expansive findings reflecting additional information in the record resulting from additional hearings. For

ease of reference, the County's references to County Council findings will refer to those in No. 04-057.

V. STANDARD OF REVIEW.

A. The GMA Grants Broad Discretion to the County, Not the Board, in making Planning Choices.

GMA's strong deference to a local government's choices and decisions is stated very clearly in the statute. The burden is on the petitioner to demonstrate that a county's actions are not in compliance with the GMA. RCW 36.70A.320(2). The GMA requires the Board to presume a challenged ordinance is valid. RCW 36.70A.320(1); City of Redmond v. CPSGMHB (Redmond II), 116 Wn.App. 48, 56, 65 P.3d 337, review denied, 150 Wn.2d 1007 (2003). The Board shall find compliance unless it finds the action by the county or city is clearly erroneous in view of the entire record. RCW 36.70A.320(3).

In 1997, the Legislature amended RCW 36.70A.320(3) to make it more difficult for Boards to reverse local decisions by changing the standard of review. The Legislature required that petitioners before the Board prove that a county's decision was "clearly erroneous" rather than finding "by a preponderance of the evidence" that the county erroneously applied or interpreted the

GMA, which had been the pre-1997 test. Chapter 429, Laws of 1997 § 20.

Also in 1997, the Legislature adopted RCW 36.70A.3201, a new section to the GMA. In discussing the new standard of review in .320(3), .3201 provides:

> In amending RCW 36.70A.320(3) . . ., the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

(emphasis added). This statute specifically recognizes the deference to be afforded local decisions.

In the recent Supreme Court decision in Quadrant Corp. v. State of Washington Growth Management Hearings Bd., 154 Wn.2d 244, 110 P.3d 1132 (2005), the Court ruled that this Board had improperly failed to defer to King County's interpretation of a

GMA provision, the language "characterized by urban growth" in RCW 36.70A.030(17). Id. at 234-38. In reaching this conclusion, the Court held that both RCW 36.70A.320(3) and RCW 36.70A.3201 afford local governments great discretion to interpret the GMA in a manner consistent with local planning objectives.

The Supreme Court's decision reversed the Court of Appeals holding that deference was to be given to the Board's interpretation of the GMA, rather than a county's. See, Quadrant Corp. v. State of Washington Growth Management Hearings Bd., 119 Wn. App. 562, 571, 81 P.3d 918 (2003). The Court stated:

> In the face of this clear legislative directive, **we now hold** that deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general. (footnote and citations omitted) While we are mindful that this deference ends when it is shown that a county's actions are in fact a "clearly erroneous" application of the GMA, we should give effect to the legislature's explicitly stated intent to grant deference to county planning decisions. Thus, a board's ruling that fails to apply this "more deferential standard of review" to a county's action is not entitled to deference from this court.

154 Wn.2d at 238 (emphasis added). The highlighted language "we now hold" makes clear that the Court in Quadrant was announcing a new standard of review.

Most recently, the Supreme Court again recognized the deference county planning choices must be given under the GMA in Viking Properties, Inc. v. Holm, 155 Wn.2d. 112, 118 P.3d 322 (2005). The Court noted that GMA's goals (RCW 36.70A.020) are frequently in conflict, and are nonprioritized. 155 Wn.2d at 127-128. Under RCW 36.70A.3201, a local government's choice in prioritizing those goals must be given deference. Id. at 125. The Court also noted the limited role that the growth management hearings boards play under the GMA, and emphasized that it was the role of the counties and cities, not a board, to make GMA policy decisions. Id. at 125-26.

The APA governs judicial review of challenges to Board actions. King County v. Central Puget Sound Growth Management Hearings Board, 142 Wn.2d 543, 552, 14 P.3d 133 (2000). This court reviews the Board's decision rather than the decision of the superior court. Id., 142 Wn.2d at 553. In light of the Supreme Court's recent decision in Quadrant, it is now clearer than ever that a court reviewing a Board decision must be reversed under the APA where the Board failed to afford the county's decision the proper deference in RCW 36.70A.320 and .3201, thereby erroneously interpreting the law.

The APA establishes nine bases on which a party may challenge an agency's action. Here, Snohomish County contends the Board exceeded its statutory authority, engaged in an unlawful decision-making process, erroneously interpreted and applied the law, and issued decisions that were unsupported by substantial evidence. See RCW 34.05.570(3)(b)-(e). Taken together, these errors resulted in arbitrary and capricious decisions. See RCW 34.05.570(3)(i).

As will be discussed in more detail below, the Board here did not give the County's decisions this required deference. In fact, in the Order on Compliance, the Board admitted it failed to defer to the County: "The Board has no duty to defer to the County when interpreting the meaning of the words of the (GMA) statute."[1] The Board's own words reflect its erroneous failure to give the required deference to the County's interpretation of the GMA. This lack of deference requires reversal in this case.

B. The Superior Court's Ruling on Res Judicata

Because the Board did not rule on the res judicata issue, this Court's review of the superior court's ruling on res judicata is not

[1] CP Sub #24, p. 2902 (footnote 8).

subject to the standards of review of agency decisions under the APA. Whether res judicata applies in a particular case is a matter of law reviewed de novo. Lynn v. Washington State Department of Labor and Industries, ___ Wn.2d ___, 125 P.3d 202, 205 (2005).

VI ARGUMENT

Subsections A through D below will address why the Court should reverse the Board's decisions. Subsection E will address why the Court should reverse the superior court's decision on the res judicata issue.

The re-designation of the Island Crossing agricultural property in this case involves two determinations. First, there must be an evaluation that the land no longer meets the GMA definition of "agricultural land." Second, there must be a separate determination that the land is properly designated for inclusion in an urban growth area. The County's analysis below focuses on the first issue – that the land is no longer "agricultural land" under the GMA. Appellants Lane and Arlington will address both issues.

A. Agricultural Lands Under the GMA.

The GMA requires that counties designate agricultural lands of long term commercial significance. RCW 36.70A.170(1)(a). It additionally requires counties to adopt development regulations to

conserve those designated agricultural lands. RCW 36.70A.060(1), (3); RCW 36.70A.040(3).

As the GMA goals make clear, the intent is to conserve productive agricultural lands in order to maintain and enhance the agricultural industry.[2] RCW 36.70A.020(8) (emphasis added). The GMA does not seek to achieve this goal by preserving every acre of soil that can produce an agricultural product. Lands that will not contribute to the viability of the agricultural resource industry need not be designated GMA agricultural lands; and once designated, that designation is not necessarily permanent. Orton Farms LLC, et al. v. Pierce County, CPSGMHB No. 04-3-0007c, Final Decision and Order (August 2, 2004) at 24.

The GMA defines "agricultural land" as:

> Land *primarily devoted to* the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, *and that has long-term commercial significance* for agricultural production. (emphasis added).

[2] As Viking Properties pointed out, however, many of the GMA goals are in conflict. 155 Wn.2d at 127-28. GMA Goal 8 may, in some instances, be in conflict with Goal 6 (RCW 36.70A.020(6)), requiring the protection of landowners' property rights from arbitrary and discriminatory actions.

RCW 36.70A.030(2). Under this statute, the test for whether lands are "agricultural lands" under the GMA is a two-part one: (1) whether the land is "primarily devoted to" agriculture, and if so, (2) whether the land has "long-term commercial significance" for agricultural production.

Although the GMA contains no definition of "primarily devoted to," the Supreme Court has determined that land is devoted to agricultural use "if it is in an area where the land is actually used or capable of being used for agricultural production."[3] Neither current use nor land owner intent is solely conclusive for the purpose of determining whether land is devoted to commercial agricultural production, although they may be considered.[4]

The GMA contains a definition of "long-term commercial significance" (also "LTCS"):

> Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

RCW 36.70A.030(10) (emphasis added). Under this definition, the

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[3] Redmond I, 136 Wn.2d at 53.
[4] Id.; Orton Farms v. Pierce County, CPSGMHB No. 04-3-0007 (Final Decision and Order, August 2, 2004) at 27.

LTCS test has five criteria. The first three (growing capacity, productivity and soil composition) are soils-based. The Board has clarified that the last two (proximity to population areas and possibility of more intense uses of the land) are "principally locational factors requiring that the infringing attributes of the land be evaluated in the context of the land's location and surroundings. Application of these two factors will likely cull the size of the potential agricultural resource land universe described solely from the soil information, ..." Orton Farms, LLC, et al. v. Pierce County, CPSGMHB No. 04-3-0007c, Final Decision and Order (August 2, 2004) at 25-26. All five factors must be present to meet the LTCS test. Redmond I, 136 Wn.2d at 54. The locational factors "are not optional factors to consider, by definition they are required components for determining LTCS; they must be evaluated and considered." Orton Farms at 26.

The GMA directs CTED to adopt guidelines to assist local governments in designating agricultural lands. RCW 36.70A.050(1)(a), (3). CTED did so in WAC 365-190-050(1), which contains ten specific factors for a county to evaluate concerning the two locational prongs of the test for "long-term commercial significance:"

(a)The availability of public facilities;
(b)Tax status;
(c) The availability of public services;
(d) Relationship or proximity to urban growth areas;
(e) Predominant parcel size;
(f) Land use settlement patterns and their compatibility with agricultural practices;
(g) Intensity of nearby land uses;
(h) History of land development permits issued nearby;
(i) Land values under alternative uses;
(j) Proximity of markets.

(Emphasis added.) The CTED guidelines provide "ready guidance"[5] to a county in evaluating whether prospective agricultural lands are of LTCS, relating to the land's proximity to population areas and the possibility of more intensive use of land.

The guidelines reflect the Legislature's concern with more than the ability of any particular parcel to grow crops. Indeed, these ten considerations are applied to land that has already been determined to meet the "primarily devoted to" agriculture soils test of RCW 36.70A.030(2) and the "growing capacity, productivity and soil composition" factors in the LTCS definition in RCW 36.70A.030(10). These factors demonstrate that the Legislature, in directing CTED to develop guidelines to assist counties in meeting their GMA obligations, obviously intended counties (and cities) to

[5] Redmond I, 136 Wn.2d at 55.

consider much more than soil types when deciding which lands to designate agricultural lands of LTCS.

Although the CTED guidelines are advisory and are not mandatory regulations (Twin Falls, Inc., et al. v. Snohomish County, CPSGMHB No. 93-3-0003, Order on Dispositive Motions (June 11, 1993) at 7), RCW 36.70A.170(2) requires counties to consider them when designating agricultural resource lands. The guidelines are designed to allow for regional differences. RCW 36.70A.050(3).

Turning to the facts in this case, the record reflects that (a) the County properly considered all of these factors, (b) the County concluded that the Island Crossing lands were no longer agricultural lands of LTCS, and (c) the Board erroneously failed to defer to the County's decision.

B. The County's Decision that the Island Crossing Property was No Longer Agricultural Land of Long Term Commercial Significance was Supported by Substantial Evidence in the Record.

In large measure, the resolution of this case focuses on the Board's analysis, or lack thereof, of the County's adopted findings re-designating the Island Crossing lands, and the Board's resulting failure to afford deference to the County's choice. As the County will show, the County Council's findings are supported by both the

factual record and the ten LTCS locational criteria in WAC 365-190-050(1).

Neither the GMA nor the guidelines themselves specify how many of the WAC criteria have to be evaluated and a specific conclusion reached in order to meet the LTCS test. They also do not specify how a county is to analyze the criteria in evaluating whether the facts weigh in favor of a finding of "LTCS" or "no LTCS" for each of the ten criteria. The criteria do not lend themselves to "yes/no" evaluations. In short, and not surprisingly in view of the deference to be afforded the County's choice under RCW 36.70A.3201, Quadrant and Viking Properties, one must conclude that the Legislature left the evaluation of these criteria to the local legislative body, to weigh and analyze those criteria in deciding whether, based upon local circumstances, the subject property meets the LTCS test.

In light of the lack of substantive direction that the GMA provides local decisionmakers in evaluating and applying these WAC criteria for LTCS, under Quadrant the Board was required to defer to the County's interpretation of GMA concerning whether, in light of GMA's goals and local circumstances, the Island Crossing property met the LTCS criteria. Instead, the Board here gave the

County's decision no deference, and in fact concluded that it was not required to give it any deference. With virtually no analysis, it simply decided to reject the County's evaluation of the WAC factors and adopt a contrary analysis supported by the Draft Supplemental Environmental Impact Statement[6] (DSEIS), prepared under the direction of the County's Department of Planning and Development Services (PDS). In the FDO, after citing the guidelines in WAC 365-190-050(1),[7] the Board's decision fails to analyze them, simply concluding that the County and Lane had failed "to cite to credible, objective evidence to refute or reconcile the substantial record evidence (i.e., the PDS report, the DSEIS, USDA soils survey) to the contrary."[8] In the subsequent Order on Compliance, the Board undertook no analysis at all of the factors in WAC 365-190-050(1), and in conclusory fashion simply determined that the locational factors mandated inclusion as agricultural resource lands.[9] CP Sub #24, p. 2902 (footnote 7).

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[6] CP Sub #24, pp. 2182-2183. The DSEIS in its entirety (Id., pp. 2125-2363) was prepared in February 2003 to analyze the proposals considered by the County in the 2002 docket requests for comprehensive plan amendments, as authorized by RCW 36.70A.470(2).

[7] CP Sub #24, pp. 2577-78.

[8] CP Id., p. 2589.

[9] Although the Board in its Order on Compliance said that it "defers to" CTED's "reading" of the factors in WAC 365-190-050(1) [CP Sub #24, p. 2902 (footnote 6)], in fact the CTED brief for the compliance hearing never addresses those factors. CP Id., pp. 2759-2779.

1. Analysis of Factors in WAC 365-190-050(1).

The County will now compare the DSEIS findings with those of the Council regarding the criteria in WAC 365-190-050(1).[10] In most cases, there is no dispute about the facts. The differences between the DSEIS and the Council's findings revolve around the conclusions reached from the facts. The County will demonstrate that the Council's findings are better supported by the record than are the DSEIS findings. At the minimum, the evidence in the record could have supported a conclusion either way, and the County Council's decision should have been upheld by the Board under the "clearly erroneous" test in RCW 36.70A.320(3).

Criterion 1 - Availability of Public Facilities (WAC 365-190-050(1)(a)) (See App. A(1)):

RCW 36.70A.030(12) defines "public facilities" as including domestic water systems, sanitary sewer systems, roads and highways. The DSEIS admits that the subject property has public water and sewer adjacent to it. Tax assessments reflect the availability of public water,[11] a public facility more useful for urban development than agricultural use. The fact that sewer cannot be

[10] The DSEIS "*analysis*" (CP Sub #24, p. 2183) and **Council findings** in Ordinance No. 04-057 (Id., pp. 2627-2634) are set forth in Appendices A(1) through A(10), with each Appendix corresponding to one of the ten criteria in WAC 365-190-050(1).
[11] CP Sub #24, pp. 1855, 1876.

hooked up to the property is due only to the general prohibition in RCW 36.70A.110(4) restricting sewer to urban growth areas, except for public health emergencies. If the County's re-designation of the Island Crossing property to the Arlington UGA were upheld, sewer could be hooked up. It is right there; it is available.[12] Whether public facilities are "available" has to do with whether they are located in the area and are present to serve the subject property. They are. This is not a case where the nearest sewer line is five miles away, in which case it would not be "available."

Similarly, the restriction on extending sewer service to the Rural Freeway Service properties in the shoreline permit mentioned in the DSEIS is a temporary condition. There has been no showing that the shoreline permit could not be amended and permission to hook up to sewer granted if the Island Crossing property went into the UGA. The DSEIS admitted as much when it stated:

> ". . . [D]evelopment of the proposal site would bring improvements in site infrastructure, including sewer service."[13]

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[12] The definition of "available" is, "1. suitable or ready for use; of use or service; at hand; 2. readily obtainable; accessible." Webster's Encyclopedic Unabridged Dictionary of the English Language (1989).

[13] CP Sub #24, p. 2171.

The DSEIS's conclusion that public services are not available is simply wrong and an erroneous conclusion in light of the facts. The County's conclusion that public facilities are available, and that their presence is a factor weighing against a finding of LTCS, is correct.

Criterion 2 - Tax Status (WAC 365-190-050(1)(b)) (See App. A (2)):

As with Criterion 1, the facts are not in dispute. The DSEIS admits that over two-thirds of the Island Crossing lands are taxed not for agricultural use but for their "highest and best use." Less than one-third of the lands are taxed for agricultural use. The County Council's conclusion that the tax status of the property weighed in favor of a finding that the land did not have LTCS as agricultural land was supported by substantial evidence in the record.

Criterion 3 - Availability of Public Services (WAC 365-190-050(1)(c)) (See App. A (3)):

If one compares the DSEIS findings/analysis for Criterion 3 to those for Criterion 1 above, it is obvious that they are nearly identical. This is because the DSEIS Criterion 3 analysis focuses on the presence of water and sewer, the same factors analyzed under Criterion 1. The DSEIS analysis was apparently based on

the erroneous assumption that "public facilities" (Criterion 1) such as water, sewer and roads are the same as the Criterion 3 "public services." They are not. They have entirely separate definitions under the GMA. "Public facilities":

> include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools. RCW 36.70A.030(12)

In contrast, "Public services":

> include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services. RCW 36.70A.030(13)

Since the DSEIS findings/analysis embarrassingly and erroneously evaluated the wrong factors for Criterion 3 ("public services"), they are completely wrong and entitled to absolutely no weight. Their analysis is irrelevant except to detract from the DSEIS's overall credibility.

The record is uncontroverted that the Island Crossing area borders the Arlington UGA and I-5, a fact admitted in the DSEIS.[14] The Council found that Arlington could provide required governmental services. The Council decided that evaluation of

[14] "The southern tip of the proposed site is adjacent to the Arlington UGA." CP Sub #24, p. 2183. See Criterion 4 below; Appendix A (4).

this criterion militates in favor of the property being removed from long term agricultural use and placed in the City's UGA, a decision supported by substantial evidence in the record.

Criterion 4 - Relationship or Proximity to Urban Growth Areas (WAC 365-190-050(1)(d)) (See App. A (4)):

The facts relating to this criterion are again uncontested. The land is adjacent to the Arlington UGA. See maps, CP Sub #24, pp. 2638-2640. That fact warrants a conclusion that it is not compatible for long term agricultural production. The Board itself recognized in the FDO that, "It is an axiom of land use planning that urban uses at urban densities and intensities inhibit adjacent farm operations . . . ." CP Sub #24, p. 2590. The Arlington UGA is, by definition, designated for future urban development. RCW 36.70A.110. The DSEIS conclusion that the fact that the property is adjacent to the UGA militates in favor of it being designated as long term agricultural resource lands defies logic, is clearly erroneous, is not supported by substantial evidence in the record and cannot be supported under any credible analysis. Again, the County's conclusion that the property's location adjacent to the UGA is a factor against LTCS is correct and is supported by the record.

Criterion 5 - Predominant Parcel Size (WAC 365-195-050(1)(e)) (See App. A (5)):

The minimum parcel size for land designated as Riverway Commercial Farmland is ten acres, as that comprehensive plan designation is implemented through the A-10 zone. SCC 30.21.025(3)(c). See Appendix B. According to the DSEIS findings, it is uncontroverted that five of the eight parcels in the 75.5 acre agricultural-designated subject area are smaller than ten acres in size.

Further, as stated in the County's Comprehensive Plan, the preference for parcel size for agricultural use in Riverway Commercial Farmland is 40 acres. GPP Policy LU 7.D.1. See Appendix C. The 1982 Snohomish County Agricultural Preservation Plan suggests the optimum size for agricultural parcels is 40 acres with 20 acres minimum for crop production if adjacent to other large parcels. CP Sub #24, p. 1855.

The DSEIS conclusion that the "predominant" parcel size of the subject property is appropriate for long term agricultural production is contradicted by the evidence, since 5 out of 8 subject parcels are substandard in size for agricultural zoning. Under the comprehensive plan, optimum planning size for agricultural use is

for even larger parcels. At the very minimum, the evidence supported a conclusion that parcel size either did or did not support LTCS. Under these circumstances, the Council's decision was not clearly erroneous and was supported by substantial evidence.

Criterion 6 - Land Use Settlement Patterns and Their Compatibility with Agricultural Practices (WAC 365-190-050(1)(f)) (See App. A (6)):

Although the DSEIS concluded that "most" of the area is in current farm use, the record does not support that claim. The DSEIS itself said the 75.5 acres of Riverway Commercial Farmland to be re-designated contained "two single-family houses with out buildings and roadside services" and that 7.12 acres were developed and 68.38 acres were undeveloped.[15] Although it said in the same paragraph that a portion of the adjacent Rural Freeway Service designated parcels was in "agriculture,"[16] it made no such claim that the agriculturally designated 75.5 acres was actually "in agriculture." In fact, the Board itself revised its Finding 17 to delete any reference to the fact that the Island Crossing

[15] CP Sub #24, p. 2175.
[16] Id.

lands are currently in active agricultural use. CP Sub #24, p. 2968.

Even if the property were currently being farmed, the fact that less than one-third of the land is in agricultural open space tax status[17] combined with the well-documented conflicts with busy highways, traffic and adjacent Arlington UGA demonstrate that existing land use settlement patterns are not compatible with long term agricultural production. The Council's conclusion is far more logical than the DSEIS's conclusory findings to the contrary, and was supported by substantial evidence in the record.

Criterion 7 - Intensity of Nearby Land Uses (WAC 365-190-050(1)(g)) (See App. A (7)):

The subject property contains two single-family houses with outbuildings.[18] The commercial development discussed in the County's findings is on the adjoining RFS-designated properties. Evidence shows that there is substantial commercial development nearby. The property is surrounded on three sides by "busy highways."[19] The subject property is also isolated from other

[17] See discussion of Criterion 2 above.
[18] CP Sub #24, p. 2175.
[19] CP Id., p. 2630.

farmland by the highways. [20] This is not conducive to long term agricultural use. The fact that there is only limited residential development on site is understandable in light of the current A-10 zoning.

The evidence related to this criterion can be read to support either the DSEIS or the County conclusion, though the County's conclusion is more supportable. In any event, the County's conclusion was not clearly erroneous and was supported by substantial evidence.

Criterion 8 - History of Land Development Permits Issued Nearby (WAC 365-195-050(1)(h)) (See App.A (8)):

Evidence in the record indicated that "over 200 homes have recently been developed on 47th Street NE, less than one-half mile from Island Crossing," that Smokey Point has been "the center of residential growth over the last ten years," and that "Island Crossing represents one of two access points to I-5 for all of this growth."[21] Clearly, the Island Crossing area in the vicinity of the subject property is growing. Accelerating residential growth on nearby lands is not compatible with long term agricultural

[20] The presence of roads helps prevent the incursion of incompatible uses into adjacent agricultural resource lands. Futurewise v. Skagit County, WWGMHB No. 05-2-0012, Final Decision and Order (September 21, 2005) at 14.
[21] CP Sub #24, p. 1824.

production. The Council's decision that the property should not be designated for long term agricultural use was supported by substantial evidence in the record.

Criterion 9 - Land Values Under Alternative Uses (WAC 365-190-050(1)(i)) (See App. A (9)):

Because of the location of the property, near a freeway interchange and bordered by busy highways and an urban growth area, it has potential for substantial economic value under alternative uses. As the Board stated in Sky Valley, et al. v. Snohomish County, CPSGMHB No. 95-3-0068c (Order on Compliance [Court Remand Portion of case], April 22, 1999), with respect to the Island Crossing property:

> "It is hard to imagine a situation where agricultural use of land near an urban area is the most economically valuable use of that land."

Id. at 11. Through this language, the Board itself has proven the County's case on this criterion.

The fact that the property is in a floodplain fringe does not mean that it could not be profitably developed for other uses consistent with the GMA. The DSEIS conclusion that higher uses than farming would be difficult because the land is in the floodplain

fringe is lacking in analysis or factual support in the record.[22] Although there are factors weighing on either side of the scale on this criterion, the County's conclusion that the land should not be long term agricultural production was supported by the record.

Criterion 10 - Proximity to Markets (WAC 365-190-050(1)(j)) (See App. A (10)):

Although urban markets for farm products are close, this finding cuts both ways, since the adjacent Arlington urban growth area also means encroaching incompatible urban development.[23] Recognizing that this WAC criterion is to be viewed as an indicator of the general LTCS factors of "proximity to population areas" and the "possibility of more intense uses of the land" in WAC 365-190-050(1), the location adjacent to the Arlington UGA militates against a finding that the subject property is appropriate for LTCS.

2. Summary of WAC 365-195-050(1) Factors.

Local governments have broad discretion in developing comprehensive plans and development regulations tailored to local circumstances. King County v. CPSGMHB, 142 Wn.2d at 561

[22] E.g., there is no evidence in the DSEIS or elsewhere in the record that County development regulations would prohibit construction in a floodplain fringe.
[23] See discussion of Criterion 4, supra.

(citing RCW 36.70A.3201). Local discretion is bounded, however, by the goals and requirements of the GMA. Id.

Snohomish County's action was properly based upon GMA criteria. It evaluated and analyzed the indicators in WAC 365-190-050(1) for whether the Island Crossing property was still agricultural land of long-term commercial significance. Here, the Board should have deferred to the County's choice because that decision to re-designate the Island Crossing property was not prohibited by the GMA goals or requirements and was supported by substantial evidence in the record. Nonetheless, the Board rejected those findings because it did not agree with them, preferring the conclusions reached in the DSEIS. However, the Board may not simply reject a county's findings and analysis based on the record before it without demonstrating that the county's decision is clearly erroneous. RCW 36.70A.320(3). Here, the Board failed to show that the County's decision was clearly erroneous, and this failure is fatal to its decision.

A review of its Corrected FDO[24] and Order on Compliance[25] demonstrates that the Board simply accepted the PDS/DSEIS

[24] CP Sub #24, p. 2589.
[25] Id., p. 2902 (footnote 7).

analysis at face value, and failed to peel away the layers of those conclusions to discover that, in many cases, they were unsupported by the record, contradictory and simply dead wrong. One is left with the conclusion that the Board accepted the PDS analysis in the DSEIS rather than that of the County Council simply because the DSEIS supported the conclusion the Board wanted to reach.

The Board contended that the County failed to present any evidence to contradict that in the PDS/DSEIS report. CP Sub #24, p. 2589. This contention is belied by the record. In fact, the County Council and the DSEIS largely reviewed the same "evidence;" they just drew different conclusions from it. Also, the DSEIS pre-dated the Council hearings and therefore was without the benefit of the County's fact-finding process. The County Council's analysis is therefore entitled to greater deference than the DSEIS report.

Under the clearly erroneous standard in RCW 36.70A.320(3), the Board was required to defer to the County Council's conclusions unless a mistake had been made. There was no mistake by the Council. The conclusion that the Island Crossing property should be re-designated from agricultural resource land under the GMA because it was no longer of LTCS for agricultural production was supported by the record. The DSEIS conclusions

that the property should remain in agricultural production long term are just wrong on half of the WAC criteria. On several others, a conclusion could be reached either way. Although the County's conclusions are better supported by the record than those in the DSEIS, at worst, a conclusion could be reached, based on an analysis of the ten factors under WAC 365-190-050(1), that the land either was of LTCS or was not of LTCS, i.e., the record supported either conclusion.

That the Board failed to defer to the County's interpretation of the GMA is clear from the Board's own language in the Compliance Order:

> "The Board has no duty to defer to the County when interpreting the meaning of the words of the statute (GMA)." CP Sub #24, p. 2902 (footnote 8).

In light of the clear directive in Quadrant that the Board must afford deference to a local government's interpretation of the GMA (154 Wn.2d at 238-40), it is apparent that the Board imposed the wrong standard of review in its analysis of the County's enactments. Under the deferential standard of review that the Board was supposed to grant to the County's decision, it should have upheld the County's re-designation of the property.

The Board's failure to defer to the County's findings and uphold the County in that regard was clearly erroneous under RCW 36.70A.320(3), and in violation of its duty to defer to the choices made by local decisionmakers "in full consideration of local circumstances." RCW 36.70A.3201; Viking Properties, Inc. v. Holm, 155 Wn.2d at 125-26. The Board's decision was therefore based upon an erroneous interpretation of the law and not supported by substantial evidence in the record.

C. The Board Improperly Re-Weighed the Evidence and Re-Evaluated the Credibility of Witnesses in Violation of RCW 36.70A.320 and .3201.

An evaluation of the Board's two decisions in this case demonstrates that, rather than granting "deference"[26] to the "broad range of discretion"[27] that counties have to choose their development regulations after balancing "priorities and options in full consideration of local circumstances,"[28] the Board simply usurped Snohomish County's role as legislator and fact finder in this case. The Board weighed and re-weighed the evidence and credibility of witnesses in violation of its role as a review body. On factual matters, including assessing the credibility of witnesses, an

[26] RCW 36.70A.3201.
[27] Id.
[28] Id.

appellate body such as the Board may not substitute its judgment for that of the fact finding body, the Council. Port of Seattle v. Pollution Control Hearings Board, 151 Wn.2d 568, 588, 90 P.3d 659 (2004). The Board's unsupported opinions about factual matters cannot form the legal basis to overturn the careful consideration of the local legislative body.

Regarding whether the property had "long-term commercial significance," the Board, in its FDO, discounted the County's reliance on the testimony of an individual who had operated a dairy farm in the area fifty years earlier who had abandoned farming "because the land could not be profitably farmed." CP Sub #24, p. 2589. The Board concluded that:

> Anecdotal testimony, particularly from an individual whose declared expertise with the area is decades removed from the present and whose declared expertise was in dairy rather than crop farming, does not constitute credible evidence on which to support the County's action." Id.

Instead, the Board cited to other evidence in the record which refuted that testimony, and concluded:

> [T]he only record support cited by the County and Intervenor in support of dedesignation are (sic) far less credible than the substantial contrary evidence in this record.

Id.

In the FDO, the Board committed multiple errors by re-weighing the evidence and evaluating the credibility of witnesses. CP Sub #24, pp. 2589-2591. The Board dismissed "anecdotal testimony" from a farmer in the area as not "credible evidence." The Board evaluated the evidence (which it did not hear as original fact finder) and decided that it gave credence to "contrary evidence in the record" from that found persuasive by the County. The Board disregarded expert testimony from Intervenor Lane's consultant because it decided it was prejudiced in Lane's favor. CP Id., pp. 2589-2590. The Board failed to analyze specifically any of the CTED factors in WAC 365-190-050(1) related to the land's proximity to population areas and the possibility of more intense uses of the land, simply concluding that the County's findings that "farming is no longer financially viable" and that the Island Crossing area will inevitably "be converted from agricultural uses to commercial uses" were not based on "objective, scientifically respectable facts." CP Id., 2589. The Board's "analysis" erroneously focused on the land's "commercial viability,"[29] which is

[29] Orton Farms (at 27-28) recognized that "commercial viability" may be considered as a relevant factor in determining LTCS, though it is not conclusive.

not even one of the five prongs of the statutory test for LTCS. RCW 36.70A.030(10).

In the Order on Compliance, after noting that the County had taken the same action as it had in Amended Ordinance No. 03-063 eight months earlier, the Board concluded that all the County had done on remand was "to place more testimony in the record, both pro and con, regarding the historical or speculative future ability of specific individuals to profitably farm specific parcels within the Island Crossing triangle." CP Sub #24, p. 2901. The Board stated that none of the witnesses relied on by the County or Lane had any expertise "as a real estate or agricultural industry analyst," nor did they "address either the criteria listed at WAC 365-190-050 nor the issue of the long-term agricultural significance of the larger pattern of agricultural significance of the larger pattern of agricultural land of which the Island Crossing triangle is a part, i.e. the Stillaguamish River Valley." Id. In fact, as discussed in Subsection VI.B.1 above, the County's findings in Ordinance No. 04-057 addressed many of the criteria in WAC 365-190-050(1); it was the Board's Order on Compliance which did not. The Board noted that in prior cases it had approved re-designations of resource lands that had become surrounded by incompatible urban uses and were no longer

supported by necessary industry infrastructure (sawmills for forestry lands). CP Id., p. 2903. However, neither of these situations existed here. CP Id., p. 2904.

These comments and rulings do not afford deference to the County's determinations in how they plan for and manage growth. They demonstrate the very antithesis of deference - not just a willingness but an active desire by the Board to be the fact finder and legislator. However, this is not the role that the Legislature carved out for the Board under the GMA (RCW 36.70A.250-.340). The Board is to be a review body, acting in an appellate capacity, granting deference to the decision of the local legislative body as required by law (RCW 36.70A.3201), and overturning the County's decision only where it is clearly erroneous (RCW 36.70A.320(3)). The Board erroneously applied or interpreted the law and engaged in unlawful procedure, requiring reversal under RCW 34.05.570(3)(c) and (d).

D. The Order On Compliance Additionally Violated the GMA by Imposing a New Test for Re-Designating Agricultural Lands that is Not Authorized by the GMA.

The Board's Order on Compliance constituted a unilateral, unprovoked and unlawful re-drafting of the GMA to impose a new standard for the re-designation of agricultural lands. The Board

ruled that before land could be re-designated out of an agricultural use, the County had to analyze the impact that decision would have on the agricultural industry as a whole. This test, focusing on the agricultural industry as a whole rather than the specific characteristics of the particular property at issue, is contrary to the GMA.

For ten years, the Board has recognized that the designation of resource lands under the GMA is based upon the site specific characteristics of the lands at issue. In one of its earlier decisions, the Board noted that under the statutory sequencing of events under the GMA (RCW 36.70A.040(3)), "the land speaks first," meaning that resource lands and critical areas are designated prior to doing other GMA planning such as establishing urban growth areas or adopting comprehensive plans. Bremerton v. Kitsap County, CPSGMHB No. 95-3-0039c (Final Decision and Order, October 6, 1995) at 31.[30] This Board has found that the statutory obligation to designate agricultural lands requires a review of the specific lands in question, to see if they meet the definition of "agricultural lands" having "long-term

[30] The Supreme Court has recognized the importance of this sequencing to prevent the irreversible loss of agricultural lands before the completion of the comprehensive planning process. Redmond I, 136 Wn.2d at 47-48.

commercial significance." RCW 36.70A.030(2), (10); .060(1), .170(1)(a). Sky Valley, et al. v. Snohomish County, CPSGMHB No. 95-3-0068c (Final Decision and Order, March 12, 1996) at 112-13.

In 1998, the Supreme Court in its Redmond I decision, clarified that the test for whether certain properties meet the LTCS requirement for designated agricultural resource lands was based on a site-specific analysis. After first noting that an area-wide inquiry was part of the test in RCW 36.70A.030(2) for whether land was "devoted to" agriculture, the Court pointed out that after the "devoted to" part of the GMA test for "agricultural lands" had been applied and met, the LTCS test applied to the lands was a site-specific test. The determination of whether the "long-term commercial significance for agricultural production" prong of the definition in RCW 36.70A.030(2) had been met was based upon an analysis "of the land in question." 136 Wn.2d at 54. In that regard, the court continued that the analysis of the ten factors in WAC 365-190-050(1) was applied to determine if the specific "land" at issue met that LTCS test. Id. at 55. Thus, the LTCS test is a site-specific one.

Now, in this case, the Board has changed the rules. In trivializing the parcel-specific evidence presented by various

knowledgeable farmers at the hearing on remand related to the specific Island Crossing property at issue in this case, the Board stated:

> The County's reliance on anecdotal, parcel-focused witness testimony as the primary determining factor of LTCS has too narrow a focus - it misses the broad sweep of the Act's natural resource goal, which is to maintain and enhance the agricultural resource *industry*, not simply agricultural operations on individual parcels of land. RCW 36.70A.020(8). This breadth of vision informs a proper reading of the Act's requirements for resource lands designation under .170 and conservation under .060. Reading these provisions as a whole, it is apparent that agricultural lands with "long-term commercial significance" are *area-wide patterns of land use*, not localized parcel ownerships.
>
> Historical or speculative statements by individuals regarding their personal inability to profitably farm certain parcels does not inform a GMA-required inquiry into the *long term commercial significance of area-wide patterns of land use* that are to *assure the maintenance and enhancement of the agricultural land resource base to support the agricultural industry.* By de-designating resource lands based on anecdotal testimony regarding specific parcels (the Island Crossing triangle viewed in isolation), as opposed to the contextual land use pattern of the agricultural lands and industry infrastructure that serves the surrounding Stillaguamish River Valley (*see* Findings of Fact 16-18), the County has committed a clear error. (emphasis added, italics in original) (footnotes omitted)

CP Sub #24, p. 2903. In this ruling, the Board created a new test for evaluating the long-term commercial significance of agricultural lands. Instead of looking at the specific parcel in question, the

Board said that counties must engage in an "area-wide" inquiry regarding "patterns of land use" and consider the impacts on the entire "agricultural industry." However, there is no requirement in the GMA, nor any provision in WAC 365-190-050(1), that requires a county to undergo such an analysis, let alone elevates this "area-wide" inquiry into a factor that can trump the County's decision on the designation of specific lands based on the factors in the LTCS definition in RCW 36.70A.030(10) as refined through the criteria in WAC 365-190-050(1).

The Board's new "test" is contrary to the language of the GMA, as construed by the Supreme Court in Redmond I. The GMA requires a parcel-specific analysis to determine whether a particular piece of land qualifies as agricultural land of LTCS.[31]

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[31] The Board's requirement that the County consider the impacts to the "agricultural industry" is also squarely contrary to the Western Board's ruling in Panesko v. Lewis County, No. 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, February 13, 2004) at 11-12:

> We note that throughout the GMA and the court decisions construing it the focus is on the nature of the *land*, not on the nature of the agricultural industry that is using the land at any given time . . . .
>
> It is true, as the County urges, that the reason for conserving agricultural lands is to maintain and enhance agriculture-based industries. RCW 36.70A.020(8). However, this reason is not based in any particular industry or industries, but in the potential of the land to be used for commercial agricultural production . . . .
>
> . . . The GMA calls for designation of agricultural lands based on characteristics of the land affecting its capability for long-term use in

The Board's declaration of a new "test" for agricultural lands is particularly pernicious in this case because it came in an Order on Compliance. The County, Arlington and Intervenor Lane had participated in hearings on remand thinking they were addressing the Board's concerns, articulated in the FDO, related to LTCS and the Board's conclusion that the County had failed to demonstrate that the Island Crossing property was no longer agricultural lands under "RCW 36.70A.170(1)(a), and RCW 36.70A.060(1) and WAC 365-190-050 . . . " CP Sub #24, p. 2591. The County followed the Board's order. It evaluated those LTCS factors in WAC 365-190-050 in its extensive findings, as discussed in Section V.B.1 above, and determined the lands were not properly designated agricultural lands under RCW 36.70A.170(1)(a). Then, rather than reviewing and evaluating those findings, the Board imposed a new test for agricultural lands which nowhere appears in the GMA, and instead is contrary to the GMA and Redmond I. The Board's bait and switch tactics raised the bar for the County to meet in order to re-

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producing agricultural products. . . . Nowhere does the GMA suggest that a county attempt to look into a crystal ball and determine what the agricultural industry might need in the way of designated agricultural resource lands. (italics in original).

designate agricultural lands. It imposed a standard not authorized by the GMA.

The Board's ruling was outside of its statutory authority or jurisdiction, was based on an unlawful decision-making process, was an erroneous application or interpretation of the law and was arbitrary and capricious. It must be reversed under RCW 34.05.570(3)(b), (c), (d) and (i).

E. The Trial Court Erred by Finding that Res Judicata Applies to the County's Actions.

1. The Superior Court May Not Consider On Appeal an Issue That Was Not Raised Before the Board.

Under the APA, a superior court is confined to reviewing the issues addressed by the inferior tribunal, in this case the Board. RCW 34.05.554(1) (exceptions to this rule inapplicable). In this case, it is uncontroverted that the District and Futurewise never raised the issue of res judicata before the Board. Under practice before the Board, an issue must have been denominated as an "issue" in the case in the Board's Prehearing Statement of Issues [(See RCW 36.70A.290(1) (The Board's authority is limited to deciding matters "presented to the board in the statement of issues, as modified by any prehearing order.")]. It is uncontroverted that

the Board's Prehearing Order did not include res judicata as an issue in this case. CP Sub #24, pp. 928-929.

2. Res Judicata Applies to Proceedings Before the Board.

The superior court ruled that the District and Futurewise were excused from raising res judicata before the Board because the Board had previously ruled in another case[32] that res judicata did not apply to proceedings before it.[33] However, it is a fundamental principle of administrative law that a court does not defer to an administrative agency the power to determine the scope of its own authority. In Re Electric Lightwave, 123 Wn.2d 530, 540, 869 P.2d 1045 (1994). The Board may not conclusively decide whether res judicata applies to proceedings before it.

Cases from the State's appellate courts confirm that res judicata applies to administrative agency proceedings. Hilltop Terrace Homeowner's Association v. Island County, 126 Wn.2d 22, 30-31, 891 P.2d 29 (1995); Lejeune v. Clallam County, 64 Wn. App. 257, 264-67, 823 P.2d 1144 (review denied, 119 Wn.2d 1005

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[32] Hensley v. Snohomish County, (Hensley VII), No. 03-3-0010, Order on Motions (August 11, 2003). The Western Board, however, has ruled to the contrary, holding that res judicata does apply to board proceedings. Skagit County Growthwatch v. Skagit County, No. 04-2-0004, Order on Motion to Dismiss (June 2, 2004)

[33].CP Sub #65, p. 27.

(1992); DeTray v. City of Olympia, 121 Wn.App. 777, 90 P.3d 1116 (2004). Although Hilltop Terrace, Lejeune and DeTray all involved permits sought at the county or city level rather than proceedings before a growth hearings board, the principle is the same: res judicata applies at the administrative level. There is nothing in the GMA that mandates that the Board may not apply the doctrine of res judicata to proceedings before it.

The District and Futurewise were required to raise the issue of res judicata before the Board. Because they did not, they could not raise it for the first time on appeal in superior court. RCW 34.05.554(1). The superior court erroneously allowed the District and Futurewise to raise res judicata for the first time on appeal. The superior court's ruling was erroneous and should be reversed.

3. The Trial Court Unlawfully Imported a Standard for Re-Designating Land That is Unsupported By the Law.

Even if res judicata could have been raised for the first time at the superior court level, the superior court erred by imposing on the County a standard that was unlawful. The court ruled that in order to re-designate the property differently from what it had been designated in 1998, the County "must show that there has been a change in circumstances since 1998, and that the property is no

longer properly designated as agricultural resource and Rural Freeway service." CP Sub #69, p.24.

The trial court's test for re-designating lands under the GMA is contrary to this court's ruling in Redmond II. In Redmond II, this court reversed a Board ruling that re-designating lands out of an agricultural resource designation required "changed conditions" and was subject to "heightened scrutiny" by the Board. 116 Wn.App at 55 (quoting Board decision). The court found that this requirement that the county show "a change in circumstances" violated RCW 36.70A.320(2), which places the burden of proof before the Board on the petitioner, not the responding county. 116 Wn.App. at 55-58.

Here, the superior court's decision finding that res judicata barred the county from re-designating the Island Crossing property from agricultural use similarly imposed a legal test that was erroneous. The trial court required the County to prove a "change in circumstances" on the property, exactly the test the Redmond II court said was illegal under the GMA. The trial court's res judicata ruling was affected by error of law and must be reversed.

VII. CONCLUSION

The County has demonstrated that the factors in RCW 34.05.570(3) have been proven, justifying reversal of the Board's decision. Similarly, the trial court's ruling on res judicata was legally erroneous. Those decisions should be reversed.

DATED this 30th day of January, 2006.

JANICE E. ELLIS
Snohomish County Prosecuting Attorney

By _____
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Senior Deputy Prosecuting Attorney
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APPENDIX A

Appendix A(1)

Criterion 1 - Availability of Public Facilities (WAC 365-190-050(1)(a)):

DSEIS: "Public water and sanitary sewer facilities are physically located in and adjacent to the proposal site. However, sanitary sewer service is restricted by the GPP to Urban Growth Areas. The shoreline substantial development permit for the existing sewer line restricts availability of sanitary sewer to the existing parcels zoned Rural Freeway Service." CP Sub #24, p. 2183.

Council Findings:

- **B.2 "Water and sanitary sewer lines running along the west side of Smokey Point Boulevard are available adjacent to the subject property."** CP Id., p. 2630.
- **B.4 "The subject property is adjacent to Interstate-5, SR 530 and Smokey Point Boulevard."** Id.
- **X.5 "This land has unique access to utilities."** If. P.2634.
- **X.6 "...Infrastructure already present includes water and sewer and three urban highways: I-5, SR 530 and Smokey Point Boulevard."** Id.

Appendix A(2)

Criterion 2 - Tax Status (WAC 365-190-050(1)(b)):

DSEIS: "Several large parcels in the area (approximately 32% of the area) are classified as Farm and Agricultural Land by the Snohomish County Assessor and are valued at their current use rather than "highest and best use." The other parcels in the area, however, are valued and taxed at their "highest and best use." Cp Sub #24, p. 2183.

Council Findings
X.7: "The 5/19/04 hearing testimony of John Henken shows that the fallow farmland there is not taxed as agricultural land." Id. p. 2634.

Appendix A(3)

Criterion 3 - Availability of Public Services (WAC 365-190-050(1)(c)):

DSEIS: "Public services such as public water and sanitary sewer service are physically located within and adjacent to the proposed site. However, sanitary sewer service is restricted by the GPP to Urban Growth Areas. The existing sanitary sewer line is available by conditions in the shoreline substantial development permit to existing parcels zoned Rural Freeway Service." CP Sub #24, p.2183.

Council Findings

- **C "The proposed expansion to the Arlington UGA is consistent with GPP Policies LU 1.A.3 and LU 2.C.3, which require that new development within UGAs are provided with adequate infrastructure and services,. . . ."** Id. p. 2630.

Appendix A(4)

Criterion 4 - Relationship or Proximity to Urban Growth Areas (WAC 365-190-050(1)(d)):

DSEIS: "The proposed site is approximately 0.9 miles from the Arlington city limits and is functionally separated from the city because it is within the Stillaguamish River floodplain. The southern tip of the proposed site is adjacent to the Arlington UGA." CP Sub #24, p.2183.

Council Findings: [The County made no specific findings on this since the record was clear that the property was adjacent to the Arlington UGA.] CP Id., pp. 2638-2640.

Appendix A(5)

Criterion 5 - Predominant Parcel Size (WAC 365-195-050(1)(e)):

DSEIS: "Predominant parcel sizes are large and of a size typically found in areas designated as commercial farmland. Nine parcels are located within the 75.5 acres of the proposed site designated Riverway Commercial Farmland. Approximate size of these parcels are 20.7 acres, 15.8 acres, 14.6 acres, 8.1 acres, 2.9 acres and three smaller parcels." CP Sub #24, p. 2183.

Council Findings:

- **B.7 "Busy highways, high assessed value, small parcel size and safety issues eliminate the viability of the Island Crossing Interchange site as agricultural land."** Id. p.2630. **(emphasis added)**

Appendix A(6)

Criterion 6 - Land Use Settlement Patterns and Their Compatibility with Agricultural Practices (WAC 365-190-050(1)(f)):

DSEIS: "Most of the proposed site is currently in farm use with interspersed residential and farm buildings." CP Sub #24, p.2183.

Council Findings:

- **Finding X.6 noted that commercial establishment nearby included "one hotel, 4 restaurants, 5 gas stations, a smokeshop and a fireworks retail store . . . ."** Id. p.2634.
- **Finding X.8 stated: "The 5/19/04 testimony of Duke Otter and Orin Barland shows that there are 22 to 30 existing grandfathered legal lots in the proposed area that are not constrained by the current A-10 zoning and which can be developed at a density at or near urban density."** Id.
- **Finding B.7 noted that "Busy highways, high assessed value, small parcel size and safety issues eliminate the viability of the Island Crossing Interchange site as agricultural land." Id. p. 2630.**

Appendix A(7)

Criterion 7 - Intensity of Nearby Land Uses (WAC 365-190-050(1)(g)):

DSEIS: "*More intense land uses and urban land developments are located within the Rural Freeway Commercial node at the I-5/SR 530 interchange that has existed essentially in its present configuration since 1968. Farmland is located immediately to the east, and, separated by I-5, to the west.*" CP Sub #24, p.2183.

Council Findings:

- **B.3: "The Island Crossing freeway interchange currently supports commercial uses."** Id. p. 2630.
- **B.4: "The subject property is adjacent to Interstate-5. SR 530 and Smokey Point Boulevard."** Id.
- **X.6: "Commercial establishments already present include one hotel, 4 restaurants, 5 gas stations, a smokeshop and a fireworks retail store, and a methadone treatment facility."** Id. p. 2634.

Appendix A (8)

Criterion 8 - History of Land Development Permits Issued Nearby (WAC 365-195-050(1)(h)):

DSEIS: *"No urban development permits have been issued in the vicinity of the proposal site except for the substantial shoreline (sic) development permit issued for the sewer line that serves only the freeway commercial uses."* CP Sub #24, p. 2183.

Council Findings: [No specific findings]

Appendix A(9)

Criterion 9 - Land Values Under Alternative Uses (WAC 365-190-050(1)(i)):

DSEIS: "*The area of the proposal site outside of the Rural Freeway Service designation is in the floodway fringe area of the Stillaguamish River. Higher uses than farming would be difficult to locate in the area because of the floodplain constraints.*" CP Sub #24, p. 2183.

Council Findings:

- **B.3: "The Island Crossing freeway interchange currently supports commercial uses."** Id. p. 2630.
- **B.8: "Snohomish County is growing rapidly and it is inevitable that sites like Island Crossing will be converted from agricultural uses to commercial uses.** Id.
- **X.4: "This land is located at an I-5 interchange between an interstate highway and a state highway, and is uniquely located for commercial needs of the area."** Id. p. 2634.

Appendix A(10)

Criterion 10 - Proximity to Markets (WAC 365-190-050(1)(j)):

DSEIS: "Markets within Arlington, Marysville, and Stanwood are located in close proximity to the site." CP Sub #24, p. 2183.

Council Findings: [The fact that the land is adjacent to the Arlington UGA makes a specific finding on this issue superfluous.]

APPENDIX B

30.21.025 Intent of zones.

This section describes the intent of each use zone. Snohomish County's use zones are categorized and implemented consistent with the comprehensive plan. The comprehensive plan establishes guidelines to determine compatibility and location of use zones. The intent of each zone is established pursuant to SCC Table 30.21.020 and is set forth below in SCC 30.21.025(1) – (4).

(1) Urban Zones. The urban zones category consists of residential, commercial, and industrial zoning classifications in Urban Growth Areas (UGAs) located outside of cities in unincorporated Snohomish County. These areas are either already characterized by, or are planned for, urban growth consistent with the comprehensive plan.

(a) Single Family Residential. The intent and function of single family residential zones is to provide for predominantly single family residential development that achieves a minimum net density of four dwelling units per net acre. These zones may be used as holding zones for properties that are designated urban medium-density residential, urban high-density residential, urban commercial, urban industrial, or other land uses in the comprehensive plan. Single family residential zones consist of the following:

(i) Residential 7,200 sq. ft. (R-7,200);

(ii) Residential 8,400 sq. ft. (R-8,400); and

(iii) Residential 9,600 sq. ft. (R-9,600).

(b) Multiple Family Residential. Multiple family residential zones provide for predominantly apartment and townhouse development in designated medium- and high-density residential locations. Multiple family residential zones consist of the following:

(i) Townhouse (T). The intent and function of the townhouse zone is to:

(A) provide for single family dwellings, both attached and detached, or different styles, sizes, and prices at urban densities greater than those for strictly single family detached development, but less than multifamily development;

(B) provide a flexible tool for development of physically suitable, skipped-over or under-used lands in urban areas without adversely affecting adjacent development; and

(C) provide design standards and review which recognize the special characteristics of townhouses, to ensure the development of well-planned communities, and to ensure the compatibility of such housing developments with adjacent, existing, and planned uses. Townhouses are intended to serve the housing needs of a variety of housing consumers and producers. Therefore, townhouses may be built for renter occupancy of units on a site under single ownership, owner agreements pursuant to chapters 64.32 or 64.34 RCW, or owner or renter occupancy of separately conveyed units on individual lots created through formal subdivision pursuant to chapter 58.17 RCW;

(ii) Low-Density Multiple Residential (LDMR). The intent and function of the low-density multiple residential zone is to provide a variety of low-density, multifamily housing including townhouses, multifamily structures, and attached or detached homes on small lots; and

(iii) Multiple Residential (MR). The intent and function of the multiple residential zone is to provide for high-density development, including townhouses and multifamily structures generally near other high-intensity land uses.

(c) Commercial. The commercial zones provide for neighborhood, community and urban center commercial, and mixed use developments that offer a range of retail, office, personal service and wholesale uses. Commercial zones consist of the following:

(i) Neighborhood Business (NB). The intent and function of the neighborhood business zone is to provide for local facilities that serve the everyday needs of the surrounding neighborhood, rather than the larger surrounding community;

(ii) Planned Community Business (PCB). The intent and function of the planned community business zone is to provide for community business enterprises in areas desirable for business but having highly sensitive elements of vehicular circulation, or natural site and environmental conditions while minimizing impacts upon these elements through the establishment of performance criteria. Performance criteria for this zone are intended to control external as well as internal effects of commercial development. It is the goal of this zone to discourage "piecemeal" and strip development by encouraging development under unified control;

(iii) Community Business (CB). The intent and function of the community business zone is to provide for businesses and services designed to serve the needs of several neighborhoods;

(iv) General Commercial (GC). The intent and function of the general commercial zone is to provide for a wide variety of retail and nonretail commercial and business uses. General commercial sites are auto-oriented as opposed to pedestrian- or neighborhood- oriented;

(v) Freeway Service (FS). The intent and function of the freeway service zone is to pro-

not be suited to the BP zone due to an inability to comply with its provisions and achieve compatibility with surrounding uses. The BP zone, under limited circumstances, may also provide for residential development where sites are large, and where compatibility can be assured for on-site mixed uses and for uses on adjacent properties;

(vii) Light Industrial (LI). The intent and function of the light industrial zone is to promote, protect, and provide for light industrial uses while also maintaining compatibility with adjacent nonindustrial areas;

(viii) Heavy Industrial (HI). The intent and function of the heavy industrial zone is to promote, protect, and provide for heavy industrial uses while also maintaining compatibility with adjacent nonindustrial areas; and

(ix) Industrial Park (IP/PIP). The intent and function of the industrial park and planned industrial park zones is to provide for heavy and light industrial development under controls to protect the higher uses of land and to stabilize property values primarily in those areas in close proximity to residential or other less intensive development. The IP and remaining Planned Industrial Park (PIP) zones are designed to ensure compatibility between industrial uses in industrial centers and thereby maintain the attractiveness of such centers for both existing and potential users and the surrounding community. Vacant/undeveloped land which is currently zoned PIP shall be developed pursuant to industrial park zone regulations (chapter 30.31A SCC).

(d) Industrial Zones. The industrial zones provide for a range of industrial and manufacturing uses and limited commercial and other nonindustrial uses necessary for the convenience of industrial activities. Industrial zones consist of the following:

(i) Business Park (BP). See description under SCC 30.21.025(1)(c)(vi);

(ii) Light Industrial (LI). See description under SCC 30.21.025(1)(c)(vii);

(iii) Heavy Industrial (HI). See description under SCC 30.21.025(1)(c)(viii); and

(iv) Industrial Park (IP). See description under SCC 30.21.025(1)(c)(ix).

(2) Rural Zones. The rural zones category consists of zoning classifications applied to lands located outside UGAs that are not designated as agricultural or forest lands of long-term commercial significance. These lands have existing or planned rural services and facilities, and rural fire and police protection services. Rural zones may be used as holding zones for properties that are primarily a transition area within UGAs on steep slopes adjacent to non-UGA lands designated rural or agriculture by the comprehensive plan. Rural zones consist of the following:

(a) Rural Diversification (RD). The intent and function of the rural diversification zone is to provide for the orderly use and development of the most isolated, outlying rural areas of the county and at the same time allow sufficient flexibility so that traditional rural land uses and activities can continue. These areas characteristically have only rudimentary public services and facilities, steep slopes and other natural conditions, which discourage intense development, and a resident population, which forms an extremely rural and undeveloped environment. The resident population of these areas is small and highly dispersed. The zone is intended to protect, maintain, and encourage traditional and appropriate rural land uses, particularly those which allow residents to earn a satisfactory living on their own land. The following guidelines apply:

(i) A minimum of restrictions shall be placed on traditional and appropriate rural land uses;

(ii) The rural character of these outlying areas will be protected by carefully regulating the size, location, design, and timing of large-scale, intensive land use development; and

(iii) Large residential lots shall be required with the intent of preserving a desirable rural lifestyle as well as preventing intensive urban- and suburban-density development, while also protecting the quality of ground and surface water supplies and other natural resources;

(b) Rural Resource Transition – 10 Acre (RRT-10). The intent and function of the rural resource transition – 10 acre zone is to implement the rural residential-10 (resource transition) designation and policies in the comprehensive plan, which identify and designate rural lands with forestry resource values as a transition between designated forest lands and rural lands;

(c) Rural-5 Acre (R-5). The intent and function of the rural-5 acre zone is to maintain rural character in areas that lack urban services;

(d) Rural Business (RB). The intent and function of the rural business zone is to permit the location of small-scale commercial retail businesses and personal services which serve a limited service area and rural population outside established UGAs. This zone is to be implemented as a "floating zone" and will be located where consistent with specific locational criteria. The rural business zone permits small-scale retail sales and services located along county roads on small parcels that serve the immediate rural residential population, and for a new rural business, are located* two and one-half miles from

an existing rural business, rural freeway service, or commercial designation in the rural area. Rural businesses, which serve the immediate rural population, may be located at crossroads of county roads, state routes, and major arterials;

(e) Clearview Rural Commercial (CRC). The intent and function of the CRC zone is to permit the location of commercial businesses and services that primarily serve the rural population within the defined boundary established by the CRC land use designation. Uses and development are limited to those compatible with existing rural uses that do not require urban utilities and services.

(f) Rural Freeway Service (RFS). The intent and function of the rural freeway service zone is to permit the location of small-scale, freeway-oriented commercial services in the vicinity of on/off ramp frontages and access roads of interstate highways in areas outside a designated UGA boundary and within rural areas of the county. Permitted uses are limited to commercial establishments dependent upon highway users; and

(g) Rural Industrial (RI). The intent and function of the rural industrial zone is to provide for small-scale light industrial, light manufacturing, recycling, mineral processing, and resource-based goods production uses that are compatible with rural character and do not require an urban level of utilities and services.

(3) Resource Zones. The resource zones category consists of zoning classifications that conserve and protect lands useful for agriculture, forestry, or mineral extraction or lands which have long-term commercial significance for these uses. Resource zones consist of the following:

(a) Forestry (F). The intent and function of the forestry zone is to conserve and protect forest lands for long-term forestry and related uses. Forest lands are normally large tracts under one ownership and located in areas outside UGAs and away from residential and intense recreational use;

(b) Forestry and Recreation (F&R). The intent and function of the forestry and recreation zone is to provide for the development and use of forest land for the production of forest products as well as certain other compatible uses such as recreation and to protect publicly-owned parks in UGAs;

(c) Agriculture-10 Acre (A-10). The intent and function of the agriculture-10 acre zone is:

(i) To implement the goals and objectives of the County General Policy Plan, which include the goals of protecting agricultural lands and promoting agriculture as a component of the County economy;

(ii) To protect and promote the continuation of farming in areas where it is already established and in locations where farming has traditionally been a viable component of the local economy; and

(iii) To permit in agricultural lands, with limited exceptions, only agricultural land uses and activities and farm-related uses that provide a support infrastructure for farming, or that support, promote or sustain agricultural operations and production including compatible accessory commercial or retail uses on designated agricultural lands.

(iv) Allowed uses include, but are not limited to:

(A) Storage and refrigeration of regional agricultural products;

(B) Production, sales and marketing of value-added agricultural products derived from regional sources;

(C) Supplemental sources of on-farm income that support and sustain on-farm agricultural operations and production;

(D) Support services that facilitate the production, marketing and distribution of agricultural products;

(E) Off-farm and on-farm sales and marketing of predominately regional agricultural products from one or more producers, agriculturally related experiences, products derived from regional agricultural production, products including locally-made arts and crafts, and ancillary sales or service activities;

(F) Accessory commercial or retail uses which shall be accessory to the growing of crops or raising of animals and which shall sell products predominately produced on-site, agricultural experiences, or products, including arts and crafts, produced on-site. Accessory commercial or retail sales shall offer for sale a significant amount of products or services produces on-site.

(v) Allowed uses shall comply with all of the following standards:

(A) The uses shall be compatible with resource land service standards;

(B) The allowed uses shall be located, designed and operated so as not to interfere with normal agricultural practices;

(C) The uses may operate out of existing or new buildings with parking and other supportive uses consistent with the size and scale of agricultural buildings but shall not otherwise convert agricultural land to non-agricultural uses.

(d) Mineral Conservation (MC). The intent and function of the mineral conservation zone is to comprehensively regulate excavations within Sno-

homish County. The zone is designed to accomplish the following:

(i) preserve certain areas of the county which contain minerals of commercial quality and quantity for mineral conservation purposes and to prevent incompatible land use development prior to the extraction of such minerals and materials and to prevent loss forever of such natural resources;

(ii) preserve the goals and objectives of the comprehensive plan by setting certain guidelines and standards for location of zones and under temporary, small-scale conditions to permit other locations by conditional use permit;

(iii) permit the necessary processing and conversion of such material and minerals to marketable products;

(iv) provide for protection of the surrounding neighborhood, ecological and aesthetic values, by enforcing controls for buffering and for manner and method of operation; and

(v) preserve the ultimate suitability of the land from which natural deposits are extracted for rezones and land usages consistent with the goals and objectives of the comprehensive plan.

(4) Other Zones: The other zones category consists of existing zoning classifications that are no longer primary implementing zones but may be used in special circumstances due to topography, natural features, or the presence of extensive critical areas. Other zones consist of the following:

(a) Suburban Agriculture-1 Acre (SA-1);
(b) Rural Conservation (RC);
(c) Rural Use (RU);
(d) Residential 20,000 sq. ft. (R-20,000);
(e) Residential 12,500 sq. ft. (R-12,500); and
(f) Waterfront beach (WFB). (Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 03-051, § 4, June 4, 2003; Ord. 03-107, § 2, Sept. 10, 2003; Ord. 03-099, § 3, Sept. 10, 2003; Ord. 04-070, § 4, July 28, 2004; Amended Ord. 04-074, § 3, July 28, 2004, Eff date Aug. 23, 2003).

*Code Reviser's note: In subsection (2)(d), the phrase "for a new rural business, are located" was added by Section 3 of Ordinance No. 03-099, but the new language was not indicated by addition marks.

30.21.030 Zoning maps and boundaries.

Official zoning maps designating the exact boundaries of each zone, as adopted by the hearing examiner and/or county council, shall be available for public review at the department during business hours. The location and boundaries of the zones shall be shown on the official zoning maps and subject to the following rules of interpretation:

(a) Any property not zoned by map shall be classified as R-5 outside of the UGAs, and R-9,600 within the UGAs;

(b) Unless otherwise referred to established points, lines, or features, the zone boundary lines are the centerlines of streets, public alleys, parkways, waterways, or railroad rights-of-way. In the case of navigable water, the outer harbor line shall be the boundary line. If the outer harbor line is not established, then the zone boundary shall extend 500 feet from the ordinary high water mark; and

(c) Zone classification will not change as a result of vacating a street or alley. The boundaries originally established will continue to apply. (Added Ord. 02-064, § 19 (part), Dec. 9, 2002, Eff date Feb. 1, 2003).

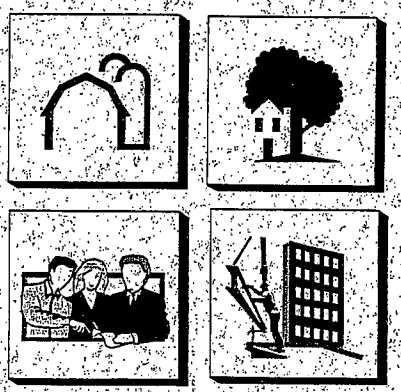
30.21.040 Flood hazard and noise impact areas.

Those areas defined as special flood hazard areas by chapter 30.65 SCC may be depicted on the official zoning maps. Where available, noise impact contours surrounding large airports may also be depicted on these maps. Such depictions are advisory only. They are provided in an attempt to assist the public in identifying properties located in special flood hazard or noise impact areas, but because they may be neither complete nor entirely accurate, they should not be relied upon and will not be used by the county for regulatory purposes. (Added Ord. 02-064, § 19 (part), Dec. 9, 2002, Eff date Feb. 1, 2003).

APPENDIX C

Snohomish County
GMA Comprehensive Plan

GENERAL POLICY PLAN



MARCH, 2003

A COMPONENT OF THE SNOHOMISH COUNTY GMA COMPREHENSIVE PLAN

3000 ROCKEFELLER AVENUE, EVERETT, WA 98201-4046

7.B.5 The Agricultural Advisory Board established by Title 2 SCC shall monitor and evaluate implementation of agricultural regulations, incentives, and policies.

7.B.6 The Agricultural Advisory Board shall monitor subdivision activity in designated farmland and provide an annual report to the planning commission and the county council.

7.B.7 Recreational uses, including golf courses and model hobby parks, may be allowed within designated farmlands through implementing development regulations which incorporate conditions ensuring compatibility with surrounding agricultural uses and limiting loss of prime agricultural soils.

Objective LU 7.C

Conserve and enhance the agricultural industry through development and adoption of supporting programs and code amendments.

LU Policies

7.C.1 Public and private infrastructure improvements should not be planned or constructed on designated farmland, or should minimize impacts on farmland and farm operations.

7.C.2 The county shall work with the cities to develop interlocal agreements that apply transition policies and standards to developments which occur in cities and are adjacent to designated farmlands.

7.C.3 Opportunities for the expansion of specialty agriculture, especially greenhouses and hydroponic farming, shall be promoted in Upland Commercial farmland and Rural Residential-10 areas.

7.C.4 The regulatory measures adopted concurrently with the adoption of the General Policy Plan shall be incorporated in the appropriate titles of the Snohomish County Code.

7.C.5 Transition area policies from the 1982 Agricultural Preservation Plan shall be retained and shall apply to lands within the transition area jurisdiction as defined on pages 104 and 105 of the 1982 Agricultural Preservation until development regulations required by this plan are adopted.

7.C.6 The county shall ensure that permitted uses in designated agricultural lands adjacent to airports are compatible with airport operations and requirements of the Federal Aviation Administration.

7.C.7 The County shall continue notification of owners of designated farmland and nearby lands as required by the Right-to-Farm Ordinance.

Objective LU 7.D

Initiate and continue studies which may result in improved conservation of agricultural lands.

LU Policies

7.D.1 Larger minimum lot sizes of forty acres for Riverway Commercial farmlands shall be investigated.